

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LEROY K. BERRA,

Plaintiff,

v.

KIRBY, Spokane County Deputy
Custody Officer, GLADHEART,
Spokane County Deputy Custody
Officer, and PURCELL, Spokane
County Deputy Custody Officer SGT,

Defendants.

NO. 2:20-CV-0013-TOR

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT is Defendants' Motion for Summary Judgment
(ECF No. 16). This matter was submitted for consideration without oral argument.
The Court has reviewed the record and files herein, and is fully informed.

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ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT ~ 1

BACKGROUND

Defendants' Motion was filed on July 7, 2020 and was noted for a hearing on August 26, 2020. ECF No. 16. Under this District's Local Rules, Plaintiff had thirty days to respond to the Motion. LCivR 7(c)(2)(A)(ii). On July 14, 2020, Plaintiff filed a Motion for Extension of Time to File Response, requesting sixty days. ECF No. 24. The Court denied this Motion because the Washington State Penitentiary law library was open, contrary to Plaintiff's claim that it was closed. ECF No. 27. On August 11, 2020, Plaintiff again filed a Motion for Extension of Time to file a Response. ECF No. 28. The Court granted this Motion because Defendants did not contest that Plaintiff was in temporary quarantine due to COVID-19. ECF No. 32. The Court ordered Plaintiff to file a response by September 21, 2020. *Id.*

Plaintiff was provided the notice required by *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) (en banc). ECF No. 23. Plaintiff failed to file any response.

DISCUSSION

Failure to comply with filing deadlines "may be deemed consent to the entry of an order adverse to the party who violates these rules." LCivR 7(e). Because Plaintiff's extended filing date on Defendants' Motion for Summary Judgment has now passed and Plaintiff failed to file any opposition, the Court deems Plaintiff to

1 have consented to entry of an Order Granting Summary Judgment pursuant to
2 LCivR 7(e).

3 Substantively, Plaintiff lacks sufficient evidentiary proof to support his
4 allegations, thus, also warranting summary judgment for Defendants. Fed. R. Civ.
5 P. 56(e)(3).

6 Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken in forma
7 pauperis if the trial court certifies in writing that it is not taken in good faith.” The
8 good faith standard is an objective one, and good faith is demonstrated when an
9 individual “seeks appellate review of any issue not frivolous.” *See Coppedge v.*
10 *United States*, 369 U.S. 438, 445 (1962). For purposes of 28 U.S.C. § 1915, an
11 appeal is frivolous if it lacks any arguable basis in law or fact. *Neitzke v. Williams*,
12 490 U.S. 319, 325 (1989).

13 Accordingly, the Court hereby revokes Plaintiff’s *in forma pauperis* status.
14 If Plaintiff seeks to pursue an appeal, he must pay the requisite filing fee.

15 **ACCORDINGLY, IT IS HEREBY ORDERED:**

16 1. Defendants’ Motion for Summary Judgment, ECF No. 16, is

17 **GRANTED.**

18 2. The Complaint and all claims against Defendants are dismissed with
19 prejudice.
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1 3. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of
2 this Order would not be taken in good faith and would lack any arguable
3 basis in law or fact.


4 4. Plaintiff's *in forma pauperis* status is hereby **REVOKED**.

5 The District Court Executive is directed to enter this Order, enter judgment
6 accordingly, furnish copies to the parties, and **CLOSE** the file.

7 **DATED** October 9, 2020.



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THOMAS O. RICE
United States District Judge